

United States District Court



District of Maine

Proposed Amendments to the Court's Local Rules

May 5, 2020

Attached are local rule amendments proposed by the District Court Local Rules Advisory Committee and the Court, which include amendments to:

- Local Rule 1 – General
- Local Rule 7A – Filing Sealed Documents and Pleadings
 - Local Rule 32 – Discovery
 - Local Rule 41.1 – Compromised Actions
- Local Rule 157.6 – Filing Sealed Documents and Pleadings

Please submit any comments on the proposed amendments no later than June 6, 2020. Comments may be communicated to:

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CIVIL RULES

RULE 1 – GENERAL (As Amended **** **, 2020)

(a) Relaxation

The Court may relax these rules in exceptional circumstances when justice so requires.

Effective Date: Repealer Scope

~~These rules shall be effective February 1, 1997, and shall govern all proceedings in cases then pending, or thereafter brought. All prior rules of this Court are repealed, and all standing orders inconsistent with these rules are vacated, as of that date.~~

(b) Definition

The term "party's attorney" or similar term whenever used in these rules shall include s a party appearing without counsel.

(c) Numbering

The numbering of the local rules tracks the numbers of the Federal Rules of Civil Procedure. Rules concerning criminal practice have been assigned to the 100 series and thereafter correspond to the Federal Rules of Criminal Procedure.

RULE 7A - FILING SEALED DOCUMENTS AND PLEADINGS

(As amended ~~January 1, 2013~~)

A document or pleading may be filed under seal only upon order of the Court, in accordance with the following procedures:

(a) Motion to Seal and Sealed Documents

To obtain an order allowing one or more documents or pleadings to be sealed, a party shall electronically file on ECF a motion to seal together with the separate document(s) or pleading(s) sought to be sealed. The motion shall propose specific findings as to the need for sealing and the duration the document(s) should be sealed. The motion shall include a statement whether there is agreement of the parties to the sealing. The ECF system will generate and send a Notice of Electronic Filing (NEF) to counsel of record notifying them of the filing, but counsel will be unable to view the document. If service is required, all counsel must be served in a manner other than through ECF.

(b) Objection to Sealing Response and Replying

Unless otherwise ordered by the Court, any ~~objection-response or reply~~ to a motion ~~to~~ filed under seal and any reply thereto shall be filed electronically under seal and in accordance with Local Rule 7.

(c) Order

In making specific findings as to the need for sealing and the duration the document(s) shall be sealed, the Court may incorporate by reference the proposed findings in the motion to seal. If the motion to seal is denied, the motion to seal and any supporting document(s) tendered under provisional seal shall remain in the ECF system, sealed indefinitely, unless the Court orders otherwise. ~~The parties should anticipate that the~~ The Court's order ~~granting or denying the on the~~ motion to seal will not be filed under seal and will be publicly available.

(d) Public Notice

The docket entry noting the filing of ~~the a~~ motion to seal, ~~and of any objection response~~ and reply thereto, and any sealed document(s) or pleading(s) shall be publicly available on ECF, but the document(s) or pleading(s) themselves shall only be available to the Court.

(e) Exceptions

- (1) No motion or order is required for the filing of a document that has been redacted solely to remove personal identifiers pursuant to Fed. R. Civ. Pro. 5.2 or that is included within a category of pleadings and documents deemed sealed or authorized to be filed ex parte pursuant to a federal statute, the federal rules of procedure, or the local rules of this Court. Any filing of a redacted document shall reference the authority for such redaction.
- (2) Documents marked confidential pursuant to an existing protective order may not automatically be filed under seal. The parties must confer and attempt to redact the exhibit in order to remove “confidential” material that is not essential for the Court’s use in rendering a decision. If the exhibit cannot be redacted by agreement to remove confidential information, the party claiming that the document should be under seal shall file a motion in compliance with paragraphs (a-b) above.
- (3) Sealed pleadings and documents, such as deeds, photographs, or bulky exhibits, which cannot be filed electronically, shall be filed in accordance with the provisions of the ECF User Manual.

RULE 32 - USE OF DEPOSITIONS IN COURT PROCEEDINGS
(As Amended ***)**

(a) Stipulations Regarding Objections

The Court will not give any effect to a stipulation attempting to preserve for trial those objections which by Fed. R. Civ. P. 32(d)(3)(A) and (B) are waived (unless reasonable objection is made at the taking of the deposition).

(b) Use of Depositions

See Local Rule 26~~(b)~~(c).

RULE 41.1 - ~~COMPROMISED DISMISSAL OF~~ ACTIONS
(As Amended July 1, 2020)

(a) Dismissal of Compromised Actions

Within 30 days after counsel notify the Clerk that an action has been settled, counsel shall execute and file the papers necessary to terminate the action as of record. Upon failure of counsel to do so, unless otherwise ordered by the Court, the Clerk shall enter an order ~~as of course~~ dismissing the action with prejudice but without costs, subject to the right of any party to move to reinstate the action within one year after the entry of the order if the settlement is not consummated.

(b) Dismissal for Lack of Prosecution

The Court may at any time issue an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the show cause order, the Court may enter a judgment of dismissal with or without prejudice.

(c) Dismissal of Class Actions, etc Required by Rule or Statute:

In actions to which Fed. R. Civ. P. 23(e), 23.1, 23.2 or 66 apply, or in which any other rule or any statute of the United States so requires, dismissal under this rule will be made by Court order.

RULE 157.6 - SEALED DOCUMENTS AND PLEADINGS

(Amended *****)

A pleading or document listed in subsection (a) that is designated in the caption of the document or pleading as being filed pursuant to Local Rule 157.6(a) (Sealed Document) shall be accepted as filed under seal without prior approval from the Court. Otherwise, parties seeking to seal a pleading or document shall file a motion to seal in accordance with subsection (b) or subsection (g).

(a) Automatic Sealing

The following pleadings and documents shall be sealed upon filing. They shall remain sealed until further order of the Court, unless otherwise provided below.

- (1) search warrant and tracking warrant applications, supporting affidavits and resulting warrants, which shall be sealed until the warrant is executed and returned to the Court;
- (2) arrest warrants, which shall be sealed until the warrant is executed;
- (3) motions, orders, and notices concerning matters occurring before the grand jury;
- (4) applications and orders for pen/trap devices, or wire, oral or electronic communication interceptions;
- (5) applications and orders for the disclosure of tax information;
- (6) motions and orders involving the Classified Information Procedures Act;
- ~~(7) requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act, and resulting orders, which shall be sealed until 30 days after final determination of the action by this or any appellate court;~~
- ~~(8)~~(7) all ex parte requests; and
8. motions, orders or any other pleadings and documents involving the Juvenile Delinquency Act.

(b) Motions to Seal

A party seeking to obtain an order sealing any pleading or document not listed in subsection (a) of this Rule, or seeking to continue the sealing of any pleading or document already sealed shall file a motion pursuant to this subparagraph (b). The motion shall state the basis for sealing, the period of time during which the document(s) are to be sealed, and shall set forth specific findings as to the need for sealing and the duration thereof. The motion itself shall be filed under seal, and remain sealed pending order of the Court pursuant to subsection (e) of this Rule. The documents or pleadings for which sealing is sought will be accepted provisionally under seal. Unless the motion is filed ex parte, the motion shall include a statement whether there is agreement of the parties to the sealing.

(c) Objections Responses

Any objection-response to a motion to seal pursuant to subparagraph (b), and any reply thereto, shall be filed under seal. Unless otherwise ordered by the Court, the objection-response and reply shall be filed in accordance with Local Rule 147.

(d) Captions and Attachments to Motions

The caption for a motion to seal, and any objections-responses thereto, shall clearly identify the pleading as relating to sealed matters. Any documents submitted along with the motion to seal shall bear the proper case number and contain the words "Filed Under Seal" in the caption.

(e) Orders

- (1) If the Court grants a motion to seal filed under subsection (b), it shall state its findings supporting the issuance of an order to seal, and shall specify the duration of sealing. In making specific findings as to the need for sealing and the duration the document(s) shall be sealed, the Court may incorporate by reference the proposed findings in the motion to seal.
- (2) If the Court denies a motion to seal filed under subsection (b), the motion to seal and any proposed paper documents tendered under provisional seal with that motion to seal shall be returned to the moving party. Any electronic versions of the proposed pleadings or documents shall remain in the ECF system, sealed indefinitely, unless otherwise ordered by the

Court. The denied motion to seal shall remain sealed indefinitely, unless otherwise ordered by the Court.

(f) Form of Filing

Filings under seal, and motions to seal and ~~objections-replies~~ and replies thereto, shall be in paper, unless otherwise directed by the Clerk.

(g) Transcripts of Proceedings in Criminal Cases

- (1) Duty to Request Sealing. Counsel must request an order sealing some or all of a transcript of a criminal proceeding held before an officer of this Court.
- (2) Producing a Transcript. Except for content ordered sealed by the Court, court reporters or other individuals designated to produce the record will not review the record for sealed or confidential information before producing or filing the transcript.
- (3) Partial Transcript. When the Court orders content in a transcript sealed, the court reporter will make the textual notation “sealed” in that part of the transcript. The cover page of the transcript will contain the text “Partial Transcript. The part(s) ordered sealed will not be preserved with empty or blacked-out line and page numbers. The court reporter will file the partial transcript, which will be available to the public.
- (4) Unredacted Transcript. Court reporters will separately file the unredacted transcript containing information ordered sealed. The docket entry associated with this transcript and the transcript itself will be sealed from the public.